

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Charter Communications Properties, LLC)	
)	
Petition for Determination of Effective)	CSR 5804-E
Competition in San Luis Obispo County,)	
California (CUID Nos. CA1562, CA1244,)	
CA1564, CA1561, CA1565, CA0028, CA1563,)	
CA0680, CA0709, CA0707, CA0927))	

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 2002

Released: March 14, 2002

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Charter Communications Properties, LLC ("Charter") has filed with the Commission a petition alleging that Charter is subject to effective competition from competing service providers in two separate San Luis Obispo County, California Franchise Areas (the "County"). Charter alleges that its cable systems serving the County are subject to effective competition, pursuant to Section 623 (a)(1) of the Communications Act of 1934, as amended ("Communications Act"),¹ and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission's rules.² Charter bases its allegation of effective competition on the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and EchoStar Communications Corporation ("EchoStar"). No opposition to the petition was filed.

II. BACKGROUND

2. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent (15 percent) of the households in the franchise area.³

¹47 U.S.C. § 543.

²47 C.F.R. § 76.905(b)(2).

³Communications Act, § 623(l)(1)(B), 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

3. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 76.905 of the Commission's rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area. Based on the record in this proceeding, Charter has met this burden.

III. DISCUSSION

4. Charter operates two separate cable systems in the County, the Sonic system and the Falcon system. Each franchise serves a different portion of the County. Because 2000 Census household data is not tailored to the portion of the County that represents the Sonic and the Falcon franchise areas, Charter formulated a methodology to closely approximate the number of households for each area. For the Sonic franchise area, Charter determined that there are 74,100 households in the County by subtracting 18,639, the number of households in San Luis Obispo City, from 92,739, the number of households identified in the 2000 Census data for the City and County combined. Charter further determined that there are only 55,260 households in its Sonic franchise area based upon a 76.4 percent allocation of the 74,100 County households (55,501 households per Skytrends zip codes divided by 74,100 County households).⁶ For the Falcon franchise area, Charter used the same methodology and concluded that there are 18,840 households located in the Falcon franchise based upon a 25.4 percent allocation of 74,100 County households (18,922 households per Skytrends zip codes divided by 74,100).⁷ We find Charter's methodology as an acceptable method of calculating the approximate number of households in each of the franchise areas.

5. Turning to the first prong of the competing provider test, we find that the programming of DBS providers, such as DirecTV and EchoStar, satisfy the Commission's programming comparability criterion. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁸ Charter has provided evidence of the advertising of DBS service in the local media serving both the Sonic and Falcon franchise areas.⁹ With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.¹⁰ We find that Charter has demonstrated that the County is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied for both the Sonic and Falcon franchises.

⁴47 C.F.R. § 76.906.

⁵47 C.F.R. § 76.905.

⁶ Petition at 6-7 and Exhibit 6.

⁷ Petition at 8 and Exhibit 6.

⁸See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁹See Charter Petition at 3 and Exhibit 1.

¹⁰See 47 C.F.R. §76.905(g). See also Charter Petition at 4 and Exhibit 2.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Charter sought to determine the competing provider penetration by purchasing a five-digit zip code specific subscriber report from SkyTrends that identified the DBS providers in the Sonic and Falcon franchise areas.¹¹ However, rather than simply accepting SkyTrends' DBS figures, Charter assumes that some of the subscribers in the report may actually live in zip code areas outside of the franchise areas and has devised a formula that compares U.S. Census household data for the franchise areas with subscriber zip codes to derive an allocation to apply against the DBS subscriber count.¹² The Commission believes that Charter's methodology is sound since it seeks to accurately quantify subscribers without actual obtaining individual DBS subscriber data.¹³

7. For the Sonic franchise area, Charter provided 2000 Census Bureau data showing 55,260 households in San Luis Obispo County that are located in the franchise area.¹⁴ The SkyTrends report identified 13,697 DBS subscribers in Charter's Sonic franchise area.¹⁵ Charter uses 13,637¹⁶ (99.6 percent of 13,697) as the number of DBS subscribers in the franchise area. To further bolster its claim of effective competition, Charter reduces the 13,697 DBS subscribers by 10 percent¹⁷ to reflect the possibility that some households have subscribed to both cable and DBS service and to take into account commercial or test accounts.¹⁸ The 10 percent reduction leaves an estimated 12,273 DBS subscribers located within the Sonic franchise area of 55,260 households, resulting in a 22.21 percent penetration rate.¹⁹ Because it is unable to determine which is the largest MVPD in the Sonic franchise area, Charter asserts that it can establish effective competition by demonstrating that its penetration level also exceeds 15 percent.²⁰ The Sonic franchise has 10,069 subscribers out of 55,260 households, resulting in an 18.22 percent penetration level.²¹ Thus, assuming that Charter is the largest MVPD in the franchise area, the aggregate DBS subscribership surpasses the 15 percent threshold. Conversely, assuming that a DBS provider is the largest MVPD, Charter's subscribership by itself surpasses the 15 percent threshold of the second prong of the competing provider test. Based on this record, we find that Charter has demonstrated that the number of households subscribing to programming services offered by MVPDs and DBS providers other than the largest MVPD, exceeds 15 percent of the households in the County for its Sonic franchise.

8. Because its subscribership exceeds the aggregate subscribership of the DBS providers, Charter asserts that it is the largest MVPD in its Falcon franchise area. Charter asserts that it has 8,869

¹¹ See Charter Petition at 5.

¹² See Charter Petition at 5.

¹³ See Charter Petition at 6.

¹⁴ See Charter Petition at 6.

¹⁵ See Charter Petition at 7.

¹⁶ Charter obtained the 99.6 percent allocation figure by dividing 55,260 (2000 Census Household figure) for Sonic franchise by 55,501 (Total Households Per Zip Code from Skytrends).

¹⁷ Charter doesn't explain how it arrived at the 10 percent reduction figure.

¹⁸ See Charter Petition at 7.

¹⁹ See Charter Petition at 7.

²⁰ See Charter Petition at 7.

²¹ See Charter Petition at 7-8.

subscribers or approximately 47 percent of the 18,840 households in the Falcon franchise.²² DirecTV and EchoStar have 5,318²³ combined subscribers or approximately 28.23 percent of the 18,840 households in the Falcon franchise area.²⁴ Based on this record, we find that Charter has demonstrated that the number of households subscribing to programming services offered by MVPDS other than the largest MVPD (Charter), exceeds 15 percent of the households in the County for its Falcon franchise.

9. Charter also demonstrated on this record that two DBS providers are physically able to offer MVPD service to subscribers in the County, that there exists no regulatory, technical, or other impediments to households within the County taking the services of the DBS providers, and that potential subscribers in the County have been made reasonably aware of the MVPD services of DirecTV and EchoStar.²⁵ Therefore, the second prong of the competing provider test is satisfied.

10. Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that its cable systems serving San Luis Obispo County, California, are subject to effective competition.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Charter Communications Properties, LLC **IS GRANTED**.

12. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.²⁶

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²² See Charter Petition at 8.

²³ Charter uses the same methodology to determine the number of Falcon franchise subscribers as it did for the Sonic franchise.

²⁴ Id. At 8 and Exhibit 3.

²⁵ Id. at 3-4.

²⁶ 47 C.F.R. §0.321.